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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/585,560

09/21/2007

Klaus Grohe

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8933 7590 03/06/2009  
DUANE MORRIS LLP - Philadelphia  
IP DEPARTMENT  
30 SOUTH 17TH STREET  
PHILADELPHIA, PA 19103-4196

EXAMINER

YOKAY, ERIN P

ART UNIT

PAPER NUMBER

3751

MAIL DATE

DELIVERY MODE

03/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/585,560	<b>Applicant(s)</b> GROHE, KLAUS	
	<b>Examiner</b> ERIN YOKAY	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/16/2007</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the hose guide and the undercut slot must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1-14 is rejected under 35 U.S.C. 112, second paragraph, as being vague and indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention because a “somewhat perpendicular surface” could vary substantially. It is unclear as to what structural features the term “somewhat perpendicular surface” includes or excludes.

4. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being vague and indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention because a “undercut slot” is vague and indefinite. It is unclear as to what structural features the term “undercut slot” includes or excludes.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

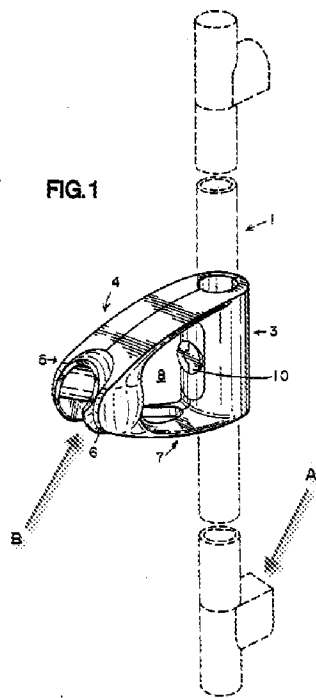
A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-6 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,277,391 to Haug.

Regarding Claim 1-6 and 14-16, Haug teaches a wall rod 1, with a wall support A that fixes the wall rod to the wall at a space from the wall. There is a mounting bracket 4, which is curved and pivotally attached to the wall rod 1 for carrying/inserting a shower attachment. The mounting bracket forms an elongation of the wall rod. The mounting bracket comprises an open pipe 5, with a cone 6, and an n opening forming an undercut slot B. The mounting bracket is pivotal about the longitudinal axis of the wall rod and an axis parallel to the longitudinal axis. The centerline of the mounting bracket lies in the plane that includes the longitudinal axis.



***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haug in view of US Patent No.5,833,192 to Buhrman.

Regarding Claims 7 and 8, Haug discloses all claimed features except for a double-bent wall support that offsets the wall rod by at least half the diameter of the hose leading to the shower attachment. However, Buhrman teaches double-bent wall

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supports 42/44 and the wall rod is at least half the diameter D of the hose H. It would have been obvious to one of ordinary skill in the art to include the double bent wall support to allow for extra support of the wall rod. It would have also been obvious to keep the distance at least half the diameter because it allows for the hose to go behind the rod to keep it out of the way of the user.

9. Claims 9-11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haug in view of US Patent No. 4,726,552 to Warshawsky.

Regarding Claims 9, Haug discloses all claimed features except for a swivel bearing located in the wall support. However, Warshawsky teaches a wall support 80/90, which includes a swivel bearing 140 for a shower outlet holder 60. It would have been obvious to one of ordinary skill in the art to replace the bearing in Haug with the alternative bearing in Warshawsky because both bearings provide a rotating motion and the Warshawsky bearing allows for the mounting bracket to be connected to the top of the wall rod.

Regarding Claims 10, 11 and 17, Haug teaches a stepped/indexed swivel motion that would prevent the mounting bracket from reaching the wall.

10. Claims 12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haug in view of US Patent No. Des. 385,333 to Caroën.

Regarding Claims 12 and 18, Haug discloses all claimed features except for a hose guide. However, Caroen teaches a hose guide. It would have been obvious to one of ordinary skill in the art to include a hose guide to keep the excess hose from being in the user's way. It would have also been obvious to place the hose between the wall rod and wall, as the direction is a design choice, and depends on where the user wants the hose.

11. Claims 13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haug in view of US Patent No. 4,274,400 to Baus.

Regarding Claim 13, Haug discloses all claimed features except for an additional mounting bracket. However, Baus discloses multiple mounting brackets 7/47. It would have been obvious to one of ordinary skill in the art to include two mounting brackets in the Haug system because the user could have the shower head placed in an overhead arrangement, or lower for the lower body. This provides extra versatility for the shower and the user.

Regarding Claim 19, Haug discloses that the bracket can be adjusted in height.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIN YOKAY whose telephone number is (571)270-



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7429. The examiner can normally be reached on Monday through Thursday 7:30-5:00, Every other Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571)272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EY  
/Gregory L. Huson/  
Supervisory Patent Examiner, Art Unit 3751